

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

FILED
MAY 16 2002
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 68501
FILED BY DRY LAKE WATER LLC
OF LAS VEGAS, STATE OF NEVADA
ON FEBRUARY 15, 2002 TO APPROPRIATE
THE WATERS OF UNDERGROUND

PROTEST

Comes now Daniel J. McGlothlin, on behalf of the United States Department of the Interior, National Park Service, whose post office address is 1201 Oak Ridge Drive, Suite 250, Fort Collins, Colorado, 80525, whose occupation is Acting Chief, Water Rights Branch, Water Resources Division, National Park Service, and protests the granting of Application Number 68501 filed on February 15, 2002 by Dry Lake Water L.L.C. of Las Vegas, State of Nevada, to appropriate the waters of underground, situated in Clark County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Exhibit A attached.

THEREFORE the protestant requests that the application be denied. The National Park Service will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and pending appropriations, if approved and developed, will not affect the water resources and water rights of Lake Mead National Recreation Area.

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Signed *Daniel J. McGlothlin*
Agent or protestant

Daniel J. McGlothlin
Printed or typed name, if agent

Address 1201 Oak Ridge Drive, Suite 250
Street No. or P.O. Box No.

Fort Collins, CO 80525
City, State and Zip Code No.

Subscribed and sworn to before me this 13th day of May, 2002.

Flora B. Romero
Notary Public

State of Colorado

County of Larimer

My Commission expires Flora B. Romero, Notary Public
State of Colorado
My Commission Expires 7/30/2002

**IN THE MATTER OF APPLICATION 68501
EXHIBIT A**

Protest by Daniel J. McGlothlin on behalf of
the United States Department of the Interior,
National Park Service

GENERAL

- I. The mission of the National Park Service (NPS) may be paraphrased from 16 U.S.C. 1, as conserving scenery, natural and historic objects, and wildlife, and providing for enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.
- II. Since 1936, the National Park Service has managed the recreational activities within the Boulder Canyon Project area now known as Lake Mead NRA. Lake Mead NRA was established on October 8, 1964 (78 Stat. 1039) to be administered for "...general purposes of public recreation, benefit, and use, and in a manner that will preserve, develop, and enhance, so far as practicable, the recreation potential, and in a manner that will preserve the scenic, historic, scientific, and other important features of the area.... The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area."
- III. The NPS is entitled to Federal reserved water rights for reserved lands within Lake Mead NRA. The priority dates for these reserved rights are the dates when the lands were reserved and are senior to the appropriation sought by Dry Lake Water, LLC. These rights have not been judicially quantified.
- IV. The Muddy River, which originates from large discharge springs located northwest of Moapa, Nevada, flows into Lake Mead NRA at the north end of the Overton Arm. The State of Nevada, Department of Wildlife, is leasing part of Lake Mead NRA adjoining the Muddy River for the purposes of the Overton Wildlife Management Area. This area supports a variety of waterfowl and vegetation. The United States has a State appropriative water right to water in the Muddy River, Certificate No. 5126. The point of diversion is located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 19, T. 16 S., R. 68 E., M.D.B.M.
- V. Springs and water-related resource attributes are important features of Lake Mead NRA. The springs provide water for vegetation and wildlife habitat and create an environment that many visitors use and enjoy. Many springs are fed by the regional carbonate groundwater flow system and could be affected by upgradient diversions.

Springs include Blue Point, Rogers, Corral, and Kelsey's Springs, and other springs. Visitation to Blue Point and Rogers Springs has been estimated at 5,000 visitors per year. Desert bighorn sheep are also dependent upon the springs in

Lake Mead NRA. A herd of approximately 150 use springs in the northern part of the National Recreation Area. The relict Las Vegas Valley leopard frog, *Rana onca*, has been found at Rogers, Corral, and Blue Point Springs. Current taxonomic studies indicate a high potential for listing of this relict population, previously believed extinct, as protected under the Endangered Species Act.

- VI. The United States has State appropriative water rights to springs near the mouth of the Muddy River, which could be impaired by the appropriation and diversion proposed by this application, including Rogers Spring, located in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 12, T.18 S., R.67 E., M.D.B.M., Certificate No. 4476.
- VII. Numerous water right applications in Garnet Valley and adjacent hydrographic basins are currently pending before the Nevada State Engineer. These include applications by Dry Lake Water L.L.C. Nos. 64037 through 64041, 64045, and 67892 through 67896, to withdraw a total of 110 cubic feet per second (cfs) of groundwater from five valleys (Coyote Spring Valley, Black Mountains Area, Garnet Valley, Hidden Valley and California Wash).
- VIII. This application proposes to divert an additional 10 cfs in Garnet Valley.
- IX. The NPS reserves the right to amend this exhibit as more information becomes available.

FINDINGS

- I. The proposed appropriation is located in Garnet Valley. Rush (1968) estimated that 400 afy of water recharges the valley from local mountain ranges and that an additional 400 afy enters the valley as subsurface inflow from Hidden Valley. Permitted and certificated water rights in Garnet Valley total approximately 3,752 afy as of January 2002 (Nevada Division of Water Resources Abstracts), which exceeds recharge. Therefore, water is not available for appropriation. Groundwater withdrawals larger than the recharge rate to Garnet Valley would come from storage and constitute groundwater mining.

Discharge from Garnet Valley (about 800 acre-feet per year) is by subsurface outflow to California Wash to the east and from California Wash to the Muddy River (Rush, 1968).¹

- II. Rights to water in the Muddy River were decreed by the Tenth Judicial Court of the State of Nevada in the case entitled *Muddy Valley Irrigation Company vs. Moapa and Salt Lake Produce Company*. According to the January 21, 1920, Order of Determination and the March 11, 1920, Further and Supplemental Order of Determination of the Nevada State Engineer, there is no water available for

¹ See Burbey (1997) for further detail regarding the geology and hydrology of Hidden and Garnet valleys and Prudic and others (1995) for a description of the regional ground-water flow system.

appropriation in the Muddy River, its headwaters, sources of supply, and tributaries (Muddy Valley Irrigation Company, 1938).

- III. Groundwater from the aquifers in Hidden Valley, Garnet Valley, California Wash and the Muddy River Springs Area are tributary to the Muddy River (Rush, 1968; Prudic and others, 1995).
- IV. The application, if approved and developed, could reduce the discharge of the Muddy River and impair existing water rights to the Muddy River, including that of the National Park Service, because it would capture water tributary to the Muddy River.
- V. Lake Mead NRA springs, located within the Black Mountains Area, are discharge points for regional groundwater flow systems and may be affected by the proposed appropriation. The National Park Service is concerned that the proposed groundwater withdrawals, if developed, in combination with existing groundwater uses in the Muddy River area, if developed, will reduce or eliminate the discharge of the springs within Lake Mead NRA by capturing water destined to the springs, given that pumping occurs over a sufficient period of time.
- VI. The water and water-related resources of Lake Mead NRA are locally and nationally important.
- VII. The Nevada State Engineer issued Order No. 1169, holding in abeyance carbonate aquifer system groundwater applications pending and any new filings in several basins, including Garnet Valley, until further hydrological study is conducted on the effect of pumpage of those water rights which have already been issued from the carbonate-rock aquifer. This application falls within the scope of that order.

CONCLUSIONS

- I. There is no water available for appropriation because committed water resources exceed groundwater recharge.
- II. The approval and development of the appropriation proposed by this application will impair the water rights of the United States, because:
 - A. The proposed appropriation, in combination with other appropriations and withdrawals proposed by Dry Lake Water L.L.C. (Applications Nos. 64037, 64038, 64039, 64040, 64041 and 64045), will reduce the discharge of the Muddy River. The United States' senior water right to the Muddy River would be injured, if the appropriation is approved and developed.

- B. The proposed appropriation, in combination with existing appropriations and pending applications in Garnet Valley and adjacent hydrographic basins, if approved and developed, will reduce the discharge of Lake Mead NRA springs. The drawdown caused by the proposed withdrawal will extend to capture groundwater that naturally discharges at the springs. The United States' senior water rights to Rogers Spring and other springs would be injured if the appropriation is approved and developed.
 - C. The effects of the appropriation proposed by this application, when combined with other existing and proposed appropriations, could impair the senior water rights of Lake Mead NRA more quickly and/or to a degree greater than the withdrawal proposed under this application alone.
- III. The public interest would not be served by granting this application, because:
- A. The water and water-related resources in the nationally important Lake Mead NRA would be diminished or impaired, as a result of the appropriation proposed by this application.
 - B. The application proposes to use water on lands where the applicant does not control both the proposed well location and the proposed place of use.
 - C. The proposed place of use is currently served by an existing permit. At least six additional applications currently pending before the Nevada State Engineer propose to provide water to the same place of use.

LITERATURE CITED

- Burbey, T.J., 1997, Hydrogeology and potential for ground-water development, carbonate-rock aquifers, southern Nevada and southeastern California: U.S. Geological Survey Water-Resources Investigations 95-4168, 65 p.
- Eakin, T.E., 1964, Ground-water appraisal of Coyote Spring and Kane Springs valleys and Muddy River Springs area, Lincoln and Clark Counties, Nevada: Nevada Department of Conservation and Natural Resources Ground-Water Resources-Reconnaissance Series Report 25, 40 p.
- Harrill, J.R., Gates, J.S., and Thomas, J.M, 1988, Major ground-water flow systems in the Great Basin region of Nevada, Utah, and adjacent States: U.S. Geological Survey Hydrologic Investigations Atlas HA-694-C, 2 sheets.
- Muddy Valley Irrigation Company, 1938, Protest of the Muddy Valley Irrigation Company in the Matter of Application No. 10188 by the United States Department of Agriculture, Bureau of Biological Survey, for Permission to Appropriate Water From Muddy Creek, Filed March 9, 1938: Nevada State Engineer's Office, Carson City, Nevada, 2 p.

Prudic, D.E., Harrill, J.R., and Burbey, T.J., 1995, Conceptual evaluation of regional ground-water flow in the carbonate-rock province of the Great Basin, Nevada, Utah, and adjacent states: U.S. Geological Survey Professional Paper 1409-D, pp. D1-D102.

Rush, F.E., 1964, Ground-water appraisal of the Meadow Valley area, Lincoln and Clark Counties, Nevada: Nevada Department of Conservation and Natural Resources Ground-Water Resources-Reconnaissance Series Report 27, 43 p.

Rush, F.E., 1968, Water-resources appraisal of the Lower Moapa-Lake Mead Area, Clark County, Nevada: Nevada Department of Conservation and Natural Resources Ground-Water Resources-Reconnaissance Series Report 50, 66 p.